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Governor

Commonwealth of Massachusetts
Department of Telecommunications and Energy
Cable Television Division

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Cable Television Franchise Renewal

Website:

www.mass.gov/dpu/catv

Cable Television Division

The Role of Government

***Federal:* The Basis for Renewal**

- **Congress enacts legislation**
- **Decision making authority over what areas in the industry are regulated**
- **Federal Communications Commission (FCC) develops regulations**
- **FCC web site www.fcc.gov**

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The Role of Government

State: Supplements Federal Law

- Enacts Legislation and develops regulation
- *DTE/Cable Division has authority over:*
 - *Licensing*
 - *Basic Service Tier (BST) ratemaking*
 - *Consumer Protection*
- Assists local government throughout renewal
- Hears appeals of license issues

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The Role of Government

Local: Community Specific Provisions

- **Delegated authority to issue cable license**
- **Licensed by individual Community**
- **Monitors Cable Operators**
- **Enforce Provisions within the License**
- **May intervene in a rate proceeding**

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Licensing Process

What is a license?

- **An agreement between the cable operator and the community.**
- **Includes all enforceable obligations between the parties.**
- **Federal law requires all cable operators to obtain licenses for each area that is served.**
- **Massachusetts law requires cable operators to obtain a license for each city or town they serve.**

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License Renewal Process

The renewal process is provided for under federal law. The process consists of checks and balances that require both the municipality and the cable operator to maintain participation in the renewal process.

The requirements of the renewal process exist to protect the rights of both the municipality and the company.

The municipality has the right to a cable system that is responsive to the needs and interests of the local community.

The cable operator has the right to protection against unfair denials of renewal.

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Renewal Process

STEP 1: Commencing the process

- **36 to 30 months prior to the existing license's expiration date, either the operator or the municipality will prepare and send a letter to the other. The letter will commence the renewal process.**
- **This letter is typically called a “renewal letter” or a “626 letter” (626 refers to the section of the Cable Act that provides for the franchise renewal process).**

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Renewal Letter

- **A majority of the time, the cable operator will send the renewal letter before a municipality will.**
- **A municipality should send its own letter invoking their rights under the renewal process, even if a letter from the operator has already been received.**

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Ascertainment

STEP 2: Commencing Ascertainment

- **Before an issuing authority begins to negotiate a license with an operator on behalf of their community, it should first ascertain the needs of the community.**
- **The process of completing this task is called ascertainment. It is a time for the issuing authority to gather data and review the operator's past and present performance, and to identify the future cable related community needs and interests. It also allows the public an opportunity to comment and participate in the renewal of the incumbent franchise.**

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Renewal Process

STEP 2: Commencing Ascertainment

- **The issuing authority shall commence ascertainment no later than six months from the date of submitting or receiving a renewal letter.**
- **Actual commencement of ascertainment is a subjective standard. There is no defined action to be taken that represents the commencement of ascertainment.**
- **A letter to the operator may be sent advising them that the ascertainment process has begun.**
- **Ascertainment may continue up to four months prior to license expiration.**

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Ascertainment

There are a wide variety of methods an issuing authority may use to evaluate the performance of a cable operator and allow the community an opportunity to participate in the renewal process. Some include:

- Public Hearing**
- Review Financial Form(s) 200, 400 (Form 300, if available)**
- Review operator's customer service records Form 500**
- Conduct City/Town Survey**
- Obtain a Map of the Service Area**
- Meet w/ Community Organizations**
- Review Plant and Equipment**
- Review Written Records**

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Public Comment & Participation

Members of the community may participate in the renewal process. An issuing authority should encourage such participation in all areas of the ascertainment process, especially during a public hearing.

An issuing authority may hold as many public hearings as it deems necessary, however, it is required to hold at least one public hearing. All hearings must be advertised in a newspaper of local interest, cablecast of an access station and posted in city/town hall.

Some communities hold two public hearings. The first during ascertainment and the second after receiving the operator's proposal.

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Completion of Ascertainment

When ascertainment is complete, the issuing authority must notify the cable operator in writing of the date of the completion of the ascertainment proceedings.

A cable operator may not submit its official renewal proposal until it has been notified that ascertainment has been completed.

Prior to notifying the operator, a municipality should be certain that all required information has been received and reviewed so the issuing authority has sufficient information to make informed decisions in the license negotiations.

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Completion of Ascertainment

Once the cable operator has been notified that ascertainment has been completed, one of two things may occur.

Option 1

The issuing authority may issue a request for proposal (RFP) from the incumbent cable operator. A cable operator must submit a proposal or draft license in response to this request.

If the issuing authority chooses to submit an RFP, it must contain a filing deadline for the cable operator to reply to the proposal.

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Request For Proposal (RFP)

An RFP may be a letter requesting the cable operator's proposal.

An RFP may be a “wish list” or an outline of minimum conditions that can serve as a basis for negotiations.

An RFP may be a draft license prepared by the issuing authority. The issuing authority may review existing licenses, either in hardcopy or from the Cable Division website and use the information acquired through ascertainment to create its draft license.

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Completion of Ascertainment

Option 2

The cable operator may submit its proposal unsolicited upon notification of the issuing authority's completion of ascertainment.

As long as the issuing authority has notified the cable operator that ascertainment has been completed, the cable operator may submit its proposal in the absence of an RFP.

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Renewal Process

STEP 3: Commencement of license negotiations

- **Once the cable operator's proposal is received by the issuing authority, the parties have four months from the date of receipt to negotiate the renewal license.**
- **At the end of this four month period, the issuing authority must decide whether to grant or deny the renewal of the license and issue a public statement.**

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Operator's Proposal / Form 100

Pursuant to Massachusetts law, no license to operate a cable television system shall be issued by a municipality without a written application (Form 100) from the cable operator. The cable operator's proposal is typically included in license application form. (the Form 100)

A cable operator may submit a Form 100 or a draft license for informational purposes. The issuing authority should confirm with the cable operator whether the proposal contained in the Form 100 is the actual renewal proposal or for information purposes. If its for informational purposes only, the clock doesn't begin running.

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Operator's Proposal / Form 100

- **In order to perform solicitation of public comment, the issuing authority to notify the public promptly when it receives the operator's renewal proposal.**
- **Notice shall either take the form of a newspaper advertisement or cablecast on the local access station and posting at city/town hall.**
- **Notification to the public will allow those interested to participate in the renewal process.**

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GRANT OF RENEWAL

LICENSE

An issuing authority must consider the following criteria when deciding to renew or deny a license.

- 1. Substantially complies with the material terms of the franchise and with applicable law;***
- 2. The quality of the operator's service, including signal qualities, response to consumer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the cable system, has been reasonable in light of community needs;***
- 3. The operator has the legal, financial and technical ability to provide the services, facilities and equipment as set forth in the operator's proposal;***
- 4. The operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.***

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GRANT OF RENEWAL LICENSE

Should the Issuing Authority decide to renew, within seven days of granting the renewal license, it must file an issuing authority statement or statement of reasons and a copy of the renewal license with the Cable Division. 207 CMR 3.06(2)

An issuing authority statement should explain the issuing authority's decision to renew the license pursuant to 207 C.M.R. 3.06(1). Specifically, whether or not the cable operator met the criteria needed for an issuing authority to grant a renewal of a license.

The Division requests that in addition to the hard copy of the license, the issuing authority submit a copy of the renewal license on diskette.

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License Negotiations

The following information is an outline of certain provisions that you may want to consider. This is not a complete list nor a suggested list of provisions to be included in a franchise agreement.

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License Negotiations

- License term (Maximum of 10 years for renewals)
- Service Area / Line extensions -reports
- Proposals for upgrading the system
- Future technology
- Institution networks (I-Nets)
- Public Access / PEG / Local Origination – Rules?
- Gross Revenues – Where to? - How much? – Passed through?
- Customer service standards
- Senior Citizen Discount
- Annual performance reviews and status reports
- Performance bonds

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License Negotiations

The following are provisions that may **NOT** be included in a franchise agreement:

- 1. Rates** – The Telecommunications Act of 1996 deregulated all service levels of ratemaking for cable television except the basic tier. The basic tier is regulated on the state level by the Cable Division. However, the amount and presentation of pass thru fees may be discussed.
- 2. Programming** – The First Amendment of the Constitution of the United States of America precludes any government body from dictating to a Cable company how their programming is packaged. However, you may request categories of programming.

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Renewal Process

36/30 month letter



Ascertainment W/in 6 month



Ascertainment should not exceed the four months prior to expiration



Once complete, inform Co.



RFP/Proposal-Form 100



Negotiate license during 4 month period



Issue public statement regarding the issuing authority's decision



If granted, send copy of statement and license to the Cable Division

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Alternative Renewal Process

- **The renewal letter in which the operator invokes the renewal process will often include language in which the cable operator offers to proceed under an “informal process”.**
- **The alternative renewal process or informal process is a simplified procedure, allowed under federal law.**
- **Allows both parties to proceed with the renewal process under a less rigid process, but requires participation.**

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Alternative Renewal Process

- **Although not subject to time frames of the more formal renewal process, the informal process is subject to Code of Massachusetts Regulations (“C.M.R.”).**
- **Operator may submit a proposal at any time.**
- **Issuing authority may grant or deny the proposal at any time.**
- **Issuing authority must hold public hearing and comment period at any time before decision on proposal.**
- **The operator must file a Form 100.**
- **Grant or denial of a license – notice with reasons.**
- **Denial – Operator may appeal to the Cable Division**

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Alternative Renewal Process

The denial of a renewal under the alternative process, shall not affect a renewal conducted by the parties in accordance with 47 U.S.C. § 546 (a) through (g). *47 U.S.C. § 546(h)*

The grant of a renewal under the alternative process, would supercede and close a renewal being conducted in accordance with 47 U.S.C. § 546 (a) through (g).

The processes may be conducted simultaneously.

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DENIAL OF RENEWAL LICENSE

An issuing authority must consider the following criteria when deciding to renew or deny a license.

- 1. Substantially complies with the material terms of the franchise and with applicable law;***
- 2. The quality of the operator's service, including signal qualities, response to consumer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the cable system, has been reasonable in light of community needs;***
- 3. The operator has the legal, financial and technical ability to provide the services, facilities and equipment as set forth in the operator's proposal;***
- 4. The operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.***

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DENIAL OF RENEWAL LICENSE

An issuing authority cannot base its denial on criteria 1 or 2 unless:

- It provided the cable operator with notice of non-compliance and has given the cable operator an opportunity to cure the provisions cited, or
- There is documentation that the issuing authority has waived its right to object to the cable operator's non compliance, or
- The cable operator has given written notice of a failure or inability to cure and the issuing authority fails to object within a reasonable time after receipt of such notice.

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PRELIMINARY DENIAL

STEP 1: Issuing Authority Statement

If an issuing authority preliminarily denies an application for license renewal, it must issue a written statement which includes the basis for the denial. 207 CMR 3.05(5).

An issuing authority statement should explain the issuing authority's decision to deny the license, specifically, whether or not the cable operator met the criteria needed for an issuing authority to grant a renewal of a license.

The issuing authority must file copies of this statement with the cable operator and the Cable Division.

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PRELIMINARY DENIAL

STEP 2: Administrative Hearing

At the request of the cable operator, or on its own initiative, the issuing authority may commence an administrative proceeding to review the preliminary denial.

The administrative proceeding is an evidence gathering process in which the issuing authority must determine whether or not the cable operator has met one or more of the four criteria for renewal.

The issuing authority must give notice of any proceeding which will consider whether or not the cable operator has met one or more of the licensing criteria.

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PRELIMINARY DENIAL

STEP 2: Administrative Hearing

During this proceeding the cable operator may present evidence to the issuing authority. It is also an opportunity for the public to comment.

At this point the parties may reach an agreement on the issues and renew the license, or the issuing authority may choose to issue a final denial.

After the administrative proceeding the issuing authority must issue a written decision granting or denying the renewal.

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PRELIMINARY DENIAL

STEP 3: Issuing Authority Statement

Grant of License - Within seven days of the grant of a renewal license it must file a copy of the issuing authority statement and send a copy of the renewal license to the Cable Division.
207 CMR 3.06(2).

Denial of License - Within 14 days of a decision to deny a license, the issuing authority shall issue a written statement detailing the reasons for denial and file copies with the cable operator and the Cable Division.
207 CMR 3.06(1),(3)

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FINAL DENIAL

If the issuing authority issues a final denial, the cable operator has 30 days to appeal to the Cable Division.

Any decision shall not be considered final unless all administrative review by the state has occurred or the opportunity therefore has lapsed. 47 USC § 546(f)

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FINAL DENIAL

Federal Law allows the court to grant appropriate relief if the court finds that the issuing authority:

1. Did not follow the procedural requirements of the Cable Act, other than harmless error;

OR

2. The issuing authority's determination that the cable operator did not meet any of the four criteria for denial is not supported by a preponderance of evidence, based on the record of the proceeding and the administrative hearing.